



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

was in conflict with the treaty between the United States and Denmark. *Held*, that the statute was not in conflict with the treaty. *Peterson et al. v. State of Iowa* (1917) 38 Sup. Ct. 109; *accord*, with respect to a similar treaty with Sweden, *Duus v. Brown* (1917) 38 Sup. Ct. 111.

The only question involved was whether the discrimination as to legatees imposed by the statute was a violation of the provisions of the treaty guarding against certain discriminations. It is beyond doubt that the treaty would be controlling over a conflicting state statute. *Ware v. Hylton* (1796, U. S.) 3 Dall. 199; *Chirac v. Chirac* (1817, U. S.) 2 Wheat 259. The treaties under examination, however, looked to the testator or living owner of the property, and sought to guard against any tax discrimination against him or his property, by reason of his alienage. Such discrimination against the alien owner of property (known as the *droit d'aubaine* and *droit de détraction*) was customary in the eighteenth and first half of the nineteenth centuries, and was only gradually removed, partly by statute and partly by treaty. Bernheim, *History of the Law of Aliens* (New York, 1885) 7 *et seq.*; Borchard, *Diplomatic Protection of Citizens Abroad*, 34 *et seq.* The Iowa statute imposed no higher tax on aliens or on their property in Iowa, but merely provided that non-resident alien legatees of property in Iowa, without regard to the residence or citizenship of the testator, should pay a higher death duty than resident legatees, and this discrimination the treaty did not cover. *Frederickson v. Louisiana* (1859, U. S.) 23 How. 445. The testators in the principal cases were citizens of Iowa, and nothing in the treaties contemplated an interference with the privilege of Iowa to legislate with respect to the disposition of property by her own citizens. No right of property arises in the alien non-resident legatee until the inheritance tax (especially when it involves the property of a deceased citizen) is paid. *United States v. Perkins* (1896) 163 U. S. 625, 16 Sup. Ct. 1073.

TRADING WITH THE ENEMY—EFFECT OF WAR ON CONTRACT OF AGENCY.—Article 4 of the French law of April 4, 1915, prohibits under penalty any commercial transaction or agreement with an enemy. On January 14, 1915, the defendant, a neutral resident in Paris, entered into an agreement with his old employers, a German firm in Germany, to represent their interests in France, for which he was to receive one-half the salary he had received before the war. It was not shown that there had been any intercourse with the enemy firm after April 4, 1915, but the defendant had carried out the duties of his agency before the Alien Property Custodian (who had taken over the property of the employers) until June 1915, and apparently had paid himself from his principal's resources the agreed salary. *Held*, that by continuing to execute the agreement after April 4, 1915, he had violated the prohibitions of the statute. *State v. Assal*, Trib. Correctional de la Seine, March 28, 1916, reported in (1917) 44 CLUNET, 593.

The French statute governing trading with the enemy appears to be more severe than that of England or the United States. Prior to the Act of April 4, 1915, penalizing commercial intercourse with the enemy, such transactions had merely been prohibited and declared void (decree of September 27, 1914). The French court in the instant case, however, did not so characterize the agreement of January 14, 1915. By the common law, such intercourse is prohibited by the outbreak of war. But the *execution* of contracts of agency entered into when such contracts were lawful, i. e., before the war, is not prohibited, even after the outbreak of war, provided it involves no payments to or intercourse with persons in the enemy country. Both the English and the United States Trading with the Enemy Acts contemplate the continuation of the business of alien enemies through agents appointed before the outbreak of the war, although all profits realized must be paid to the Alien Property Custodian, who may take

control of the business. See *Tingley v. Müller* (C. A.) [1917] 2 Ch. 144. By the weight of authority, the agent appointed before the war (i. e. before such an appointment became illegal) may continue to perform his duties under the agency, (unless abrogated by act of the parties) provided no intercourse with any one in the enemy country is thereby required. See the leading cases of *New York Life Insurance Co. v. Davis* (1877) 95 U. S. 425, and *Williams v. Paine* (1898) 169 U. S. 55, 18 Sup. Ct. 279. The decisions of several state courts have held that an agency was terminated by the outbreak of war. *Blackwell v. Willard* (1871) 65 N. C. 555; *Howell v. Gordon* (1869) 40 Ga. 302. And this will generally be the case where the nature of the agency is such that constant communication between principal and agent is essential to its operation, or that its continuation may be deemed inequitable to either party. *Cocks v. Izard* (1871, C. C. D. La.) Fed. Cas. 2934.

WILLS—ATTESTATION—NECESSITY THAT WITNESSES SEE SIGNATURE.—A type-written will offered for probate bore the signature of the testator and of three persons under whose names was appended the word "witnesses." They testified that they signed their names at the testator's request without knowing the character of the paper or the purpose of their signatures; and that they saw no writing upon the paper except their own signatures after they had successively signed. The statute (Gen. St. 1902, sec. 293) requires a will to be "in writing, subscribed by the testator, and attested by three witnesses, each of them subscribing in his presence." Held, that the will was not validly attested. *Pope v. Rogers* (1917, Conn.) 102 Atl. 583.

This case raises the question whether attesting witnesses must see the testator's signature. Under a statute which requires that the testator make or acknowledge his signature in the presence of witnesses, the witnesses must actually see the signature. *In re Mackay's Will* (1888) 110 N. Y. 611, 18 N. E. 433; *Ilot v. Genge* (1844, Eng. P. C.) 8 Jur. 323. But the Statute of Frauds and many American statutes, like that of Connecticut, merely require the writing to be signed by the testator and "attested" by subscribing witnesses. Under such statutes the testator need not expressly acknowledge his signature; it is enough if he acknowledges the instrument as his. *White v. Trustees of British Museum* (1829, C. P.) 6 Bing. 310; *Gould v. Theological Seminary* (1901) 189 Ill. 282, 59 N. E. 536; *In re Dougherty's Estate* (1912) 168 Mich. 281, 134 N. W. 24. The three cases last cited held also that the witnesses need not even see the testator's signature. But there is weighty authority *contra*. *Nunn v. Ehlert* (1914) 218 Mass. 471, 106 N. E. 163. And it is submitted that the latter view is supported by the stronger argument, for the very purpose of attestation is to require witnesses to the fact that the formalities required by the statute have been complied with. Of course under either view the testator's signature must have been made before the witnesses subscribe. *Limbach v. Bolin* (1916) 169 Ky. 204, 183 S. W. 495; but see *In re Silva's Estate* (1915) 169 Cal. 116, 145 Pac. 1015 (where the order of signing was held immaterial since all the signatures were affixed as part of a single transaction). The difficulty is in the proof of this fact when the signature is not visible to the witnesses. Where there is a perfect attestation clause, a proper execution is presumptively established. *Gould v. Theological Seminary*, *supra*; *McCurdy v. Weall* (1886) 42 N. J. Eq. 333, 7 Atl. 566. Perhaps also a statement to witnesses that the paper presented to them is a will justifies an inference of fact that it has been already signed by the testator. But under the facts of the principal case, it is submitted that no such inference would arise, so that the decision is clearly right under either view as to necessity that the witness see the signature.